IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 13713 of 2007(G)

PETITIONER:

SARATH CHANDRAN, S/O. GOPALAN,
SATHYALAYATHIL, VARANAD P.O., KOKKATHAMANGALAM,
CHERTHALA.

BY ADV. SRI.A.N.RAJAN BABU
SMT.K.SUNITHA VINOD
SRI.P.GOPALAKRISHNAN (MVA)

RESPONDENTS:
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1. **THE ASSISTANT EXCISE COMMISSIONER**
   ALAPPUZHA.

2. **THE CIRCLE INSPECTOR OF POLICE,**
   KUTHIYATHODU.

3. **THE SUB INSPECTOR OF POLICE, AROOR.**

4. **SASI, S/O. THEVAN, PANDIYALA,**
   ANJILIKKAD, AROOR.

5. **TILAKAN, S/O. THEVAN,**
   PANDIOYALA, ANJILIKKAD, AROOR.

6. **SHYLENDRAN, S/O. KUNJAPPI,**
   PATHARA, AROOR.

7. **C.RAJAPPAN, THAMARA,**
   KALAVANKODE, CHERTHALA.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, ALONG WITH WPC NO. 14515 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.13713 2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LICENCE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER AND 4 OTHERS FOR T.S. NO.13/07-08 DT. 7.4.07.

EXT.P2:- COPY OF THE LICENCE FOR T.S. NO.13 ISSUED TO THE PETITIONER FOR 03-04 BY 1ST RESPONDENT.

EXT.P3:- COPY OF THE TODDY TRANSPORT PERMIT NO.294/07-08 DT. 4.4.07 ISSUED TO THE PETITIONER AND OTEHRS PERMITTING TO TRANSPORT 150 LITERS OF COCONUT TODDY.

EXT.P4:- COPY OF THE COMPLAINT FILED BEFORE THE RESPONDENTS 2 AND 3.

EXT.P5:- COPY OF THE LETTER NO.A1-1678/07 DT. 18.5.07 WITH ANNEXURE ISSUED BY 1ST RESPONDENT.

EXT.P6:- COPY OF THE LICENCE OF THE SHOP.

RESPONDENTS EXHIBITS

EXT.R4(a):- COPY OF THE SKETCH.

EXT.R4(b):- COPY OF THE CERTIFICATE DT. 21.4.07.

EXT.PR4(c):- COPY OF THE COMPLAINT TO THE EXCISE RANGE OFFICER DT.20.3.07.

EXT.R4(d):- COPY OF THE COMPLAINT TO THE CIRCLE INSPECTOR DT. 10.4.07.

EXT.R4(e):- COPY OF THE COMPLAINT TO THE EXCISE RANGE OFFICER DT. 20.4.07.

EXT.R4(f):- COPY OF THE JUDGMENT IN OP. NO.18582/02 DT. 19.7.02.

EXT.R4(g):- COPY OF THE CERTIFICATE BY THE SC/ST DEVELOPMENT OFFICER, GRADE I, BLOCK PANCHAYAT, PATTANAKKAD.

/TRUE COPY/

P.S. TO JUDGE

tss

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) Nos.13713 and 14515 of 2007

Dated this the 17th day of July, 2007

Judgment

Koshy, J.

W.P. (C) No. 13713 of 2007 is filed by a licensee of a toddy shop alleging that functioning of Shop No.13 of Anjilikkadu in Kuthiathodu Range is being obstructed by a group of local people contending that it is located within the prohibited distance from SC/ST colony. According to the petitioner, the shop is not situated within 400 metres of any recognised SC/ST colony. W.P.. (C) No.14515 of 2007 was filed by the Secretary of Anjilikkadu South Scheduled Caste Colony Association. He pointed out that Ext.P8 certificate issued from the Scheduled Castes/Scheduled Tribes Development Department establishes that a harijan colony is situated within the prohibited distance. District Collector has also stated so. Learned counsel appearing for the shop owner submitted that in view of the proviso to rule 7 of Kerala Abkari Shops Disposal Rules (for short 'the Rules'), if shop is situated in previous years, it can be allowed to run. It has come out that

the shop is situated for the last many years. According to the petitioner/shop owner, from the year 1983 onwards, the toddy shop is functioning there and licence is being renewed from time to time especially considering the proviso to rule 7 of the Rules.

2. In W.P.(C) No.14515 of 2007, Ext.P9 is filed before the Assistant Excise Commissioner for shifting the shop. So long as the shop is licensed and licences was granted in earlier years also, we are of the opinion that police is bound to give protection for the smooth functioning of the shop and police to see that customers or employees are not prevented in coming to the shop. At the same time, we direct the Assistant Excise Commissioner, first respondent, to consider Ext.P9 in W.P. (C) No.14515 of 2007 with notice to the petitioner and the licensee and any other persons who are interested and pass orders within one month form the date of receipt of a copy of this judgment taking into account all facts and circumstances of the case.

Both writ petitions are disposed of accordingly.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

M.F.A.NO./2000

JUDGMENT

Dated:17th July, 2007